

05-1234X-87

ROUTING AND RECORD SHEET

SUBJECT: (Optional)

Advance Copy of Information Security Oversight Office Advisory

FROM:

Agency Security Classification Officer
826 Ames Building

EXTENSION

NO.

DATE

26 August 1987

TO: (Officer designation, room number, and building)

DATE

OFFICER'S INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

RECEIVED

FORWARDED

1. Executive Officer
Office of Security (OS)

1. For action.

2. Attached is an advance copy of a letter from the Director, ISOO to agencies concerning a suit filed by the National Federation of Federal Employees challenging the constitutionality and legality of Standard Form (SF) 189, the Classified Information Nondisclosure Agreement. The Director, ISOO will brief Federal agency representatives on 3 September in the GSA auditorium.

3. With the exception of CIA and NSA, SF 189 is used throughout the Government. Even through the Agency does not use SF 189, the interim procedures proposed by ISOO pending resolution of the suit and the ramifications of the challenge to its constitutionality and legality could impact on the Agency.

4. In view of the above, OS may wish to attend the 3 September briefing. The Associate Deputy General Counsel for Litigation and Community Affairs has also been notified.

Thank you.

IMMEDIATE

STAT

Form 3-65 160c (13)

FORM 1-79 610 USE PREVIOUS EDITIONS

★ U.S. Government Printing Office: 1985-494-834/49156



Information Security Oversight Office
Washington, DC 20405

August 21, 1987

Dear ~~Salutation~~:

On August 17, 1987, the National Federation of Federal Employees brought suit in the United States District Court for the District of Columbia* challenging the constitutionality and legality of the Standard Form 189, "Classified Information Nondisclosure Agreement." While we are confident that the Government will prevail in this litigation, until further notice agencies should follow these instructions with respect to the execution and implementation of the SF 189 pending some resolution of the matters in litigation.

1. As of this date, do not withdraw a person's clearance nor deny his or her access to classified information solely as a consequence of his or her refusal to sign the SF 189. However, no one should be left with the impression that this is anything more than a temporary accommodation to the lawsuit. Upon an inquiry, persons should be advised only that clearances are temporarily not being withdrawn at the direction of the Information Security Oversight Office (ISOO) pending some resolution of the lawsuit challenging the legality of the SF 189. However, any person who refuses to sign the SF 189 but continues to have access to classified information under these temporary instructions should be briefed individually on his or her responsibility to protect the information from unauthorized disclosure and the consequences that may follow from his or her failure to meet this responsibility.

2. Agencies should continue to process the SF 189 for those employees who have not yet executed it. Only those conditions discussed in paragraph 1, above, should be amended pending these temporary instructions.

*National Federation of Federal Employees v. United States of America, et al., Civil Action No. 87-2284-OG, United States District Court for the District of Columbia.

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3. Because the Standard Form 189-A, "Classified Information Nondisclosure Agreement (Industrial/Commercial/Non-Government)," is not the subject of the current litigation, agencies that are involved in the implementation of these forms should continue with their prompt execution as before.

Because of the immediacy of these instructions, we urge you to transmit them to all affected components of your agency by the most expeditious means. We are enclosing with this letter a copy of ISOO's recent regulatory change to the definition of "classifiable" as it appears in the SF 189. This definition, which appeared in the August 11, 1987 edition of the Federal Register, slightly amends the regulation published on August 3, 1987, which ISOO transmitted to you by letter of August 4. Please direct your questions to ISOO at (202) 535-7251.

Sincerely,

(signed) Steven Garfinkel

Steven Garfinkel
Director

☒Name☒
☒Title☒
☒Agency☒
☒Address☒
☒City☒
☒State☒

Enclosure



Information Security Oversight Office
Washington, DC 20405

NOTICE

In order to help clear up some of the confusion that has resulted from the recent controversy over the Standard Form 189, "Classified Information Nondisclosure Agreement," the Information Security Oversight Office will sponsor a short briefing and a question and answer session on Thursday, September 3, 1987, at 10:00 a.m. This unclassified briefing will be held in the auditorium of the General Services Administration Building at Eighteenth and F Streets, Northwest. The auditorium is located off the first floor lobby. Your agency's questions, either submitted in writing before the briefing or asked at that time, are most welcome.


Steven Garfinkel

CLASSIFIED INFORMATION NONDISCLOSURE AGREEMENTAn Agreement Between _____ and the United States.
(Name - Printed or Typed)

1. Intending to be legally bound, I hereby accept the obligations contained in this Agreement in consideration of my being granted access to classified information. As used in this Agreement, classified information is information that is either classified or classifiable under the standards of Executive Order 12356, or under any other Executive order or statute that prohibits the unauthorized disclosure of information in the interest of national security. I understand and accept that by being granted access to classified information, special confidence and trust shall be placed in me by the United States Government.
2. I hereby acknowledge that I have received a security indoctrination concerning the nature and protection of classified information, including the procedures to be followed in ascertaining whether other persons to whom I contemplate disclosing this information have been approved for access to it, and that I understand these procedures.
3. I have been advised and am aware that direct or indirect unauthorized disclosure, unauthorized retention, or negligent handling of classified information by me could cause irreparable injury to the United States or could be used to advantage by a foreign nation. I hereby agree that I will never divulge such information unless I have officially verified that the recipient has been properly authorized by the United States Government to receive it or I have been given prior written notice of authorization from the United States Government Department or Agency (hereinafter Department or Agency) last granting me a security clearance that such disclosure is permitted. I further understand that I am obligated to comply with laws and regulations that prohibit the unauthorized disclosure of classified information.
4. I have been advised and am aware that any breach of this Agreement may result in the termination of any security clearances I hold; removal from any position of special confidence and trust requiring such clearances; and the termination of my employment or other relationships with the Departments or Agencies that granted my security clearance or clearances. In addition, I have been advised and am aware that any unauthorized disclosure of classified information by me may constitute a violation or violations of United States criminal laws, including the provisions of Sections 641, 793, 794, 798, and 952, Title 18, United States Code, the provisions of Section 783(b), Title 50, United States Code, and the provisions of the Intelligence Identities Protection Act of 1982. I recognize that nothing in this Agreement constitutes a waiver by the United States of the right to prosecute me for any statutory violation.
5. I hereby assign to the United States Government all royalties, remunerations, and emoluments that have resulted, will result or may result from any disclosure, publication, or revelation not consistent with the terms of this Agreement.
6. I understand that the United States Government may seek any remedy available to it to enforce this Agreement including, but not limited to, application for a court order prohibiting disclosure of information in breach of this Agreement.
7. I understand that all information to which I may obtain access by signing this Agreement is now and will forever remain the property of the United States Government. I do not now, nor will I ever, possess any right, interest, title, or claim whatsoever to such information. I agree that I shall return all materials which have, or may have, come into my possession or for which I am responsible because of such access, upon demand by an authorized representative of the United States Government or upon the conclusion of my employment or other relationship with the Department or Agency that last granted me a security clearance. If I do not return such materials upon request, I understand that this may be a violation of Section 793, Title 18, United States Code, a United States criminal law.
8. Unless and until I am released in writing by an authorized representative of the United States Government, I understand that all conditions and obligations imposed upon me by this Agreement apply during the time I am granted access to classified information, and at all times thereafter.
9. Each provision of this Agreement is severable. If a court should find any provision of this Agreement to be unenforceable, all other provisions of this Agreement shall remain in full force and effect.
10. I have read this Agreement carefully and my questions, if any, have been answered to my satisfaction. I acknowledge that the briefing officer has made available to me Sections 641, 793, 794, 798, and 952 of Title 18, United States Code, Section 783(b) of Title 50, United States Code, the Intelligence Identities Protection Act of 1982, and Executive Order 12356, so that I may read them at this time, if I so choose.
11. I make this Agreement without mental reservation or purpose of evasion.

SIGNATURE	DATE	SOCIAL SECURITY NO. (See notice below)
ORGANIZATION		

The execution of this Agreement was witnessed by the undersigned, who, on behalf of the United States Government, agreed to its terms and accepted it as a prior condition of authorizing access to classified information.

WITNESS AND ACCEPTANCE:

SIGNATURE	DATE
ORGANIZATION	

NOTICE: The Privacy Act, 5 U.S.C. 552a, requires that federal agencies inform individuals, at the time information is solicited from them, whether the disclosure is mandatory or voluntary, by what authority such information is solicited, and what uses will be made of the information. You are hereby advised that authority for soliciting your Social Security Account Number (SSN) is Executive Order 9397. Your SSN will be used to identify you precisely when it is necessary to 1) certify that you have access to the information indicated above or 2) determine that your access to the information indicated has terminated. Although disclosure of your SSN is not mandatory, your failure to do so may impede the processing of such certifications or determinations.

**INFORMATION SECURITY OVERSIGHT
OFFICE****32 CFR Part 2003****National Security Information;
Standard Forms****AGENCY:** Information Security Oversight
Office (ISOO).**ACTION:** Final rule.**SUMMARY:** This rule provides for the use within the executive branch of standard forms that pertain to national security information. These forms are issued in accordance with the provisions of Section 5.2(b)(7) of Executive Order 12356.**EFFECTIVE DATE:** September 9, 1983.**FOR FURTHER INFORMATION CONTACT:**
Steven Garfinkel, Director, ISOO.
Telephone: 202-535-7251.**SUPPLEMENTARY INFORMATION:** Section 5.2(b)(7) of Executive Order 12356 authorizes the Director of ISOO to prescribe the use of standard forms that will promote the implementation of the government-wide information security program. ISOO has developed these forms in coordination with those agencies that will be primarily affected by them.**List of Subjects in 32 CFR Part 2003**

Classified information, Executive orders, Information, National security information, Security information.

Title 32 of the Code of Federal Regulations, Chapter XX, is amended by adding a new Part 2003 to read as follows:

**PART 2003—NATIONAL SECURITY
INFORMATION—STANDARD FORMS****Subpart A—General Provisions****Sec.****2003.1 Purpose.****2003.2 Scope.****2003.3 Waivers.****2003.4 Availability.****Subpart B—Prescribed Forms****2003.20 Classified Information**

Nondisclosure Agreement: SF 189.

Authority: Sec. 5.2(b)(7) of E.O. 12356.

Subpart A—General Provisions**§ 2003.1 Purpose.**

The purpose of the standard forms prescribed in Subpart B is to promote the implementation of the government-wide information security program. Standard forms are prescribed when their use will enhance the protection of national security information and/or will reduce the costs associated with its protection.

§ 2003.2 Scope.

The use of the standard forms prescribed in Subpart B is mandatory for all departments, and independent agencies or offices of the executive branch that create and/or handle national security information. As appropriate, these departments, and independent agencies or offices may mandate the use of these forms by their contractors, licensees or grantees who are authorized access to national security information.

§ 2003.3 Waivers.

Except as specifically provided, waivers from the mandatory use of the standard forms prescribed in Subpart B may be granted only by the Director of ISOO. The Director of ISOO will be responsible for ensuring that all waivers that necessitate changes to a standard form are cleared with the General Services Administration's Office of Information Resources Management (KLSO) as an exception to the standard form (41 CFR 101-11.8).

§ 2003.4 Availability.

Agencies may obtain copies of the standard forms prescribed in Subpart B by ordering through FEDSTRIP/MILSTRIP or by including the required quantities on a Standard Form 3146 signed by an agency approving official for self-service store purchases. The national stock number of each form is cited with its description in Subpart B.

Subpart B—Prescribed Forms**§ 2003.20 Classified Information
Nondisclosure Agreement: SF 189.**

(a) SF 189 is a nondisclosure agreement between the United States and an individual that is to be executed

as a condition prior to the United States Government authorizing that individual access to classified information.

(b) All employees of executive branch departments, and independent agencies or offices, and the employees of their contractors, grantees and licensees must sign SF 189 as a condition prior to being authorized access to classified information. This requirement may be implemented prospectively by an agency for which the administrative burden of compliance would be excessive. Only the National Security Council may grant an agency's application for prospective implementation. To request prospective implementation, an agency must submit its justification to the Director of ISOO, who will forward it with a recommendation to the National Security Council.

(c) Agencies may require other persons, who are not included under paragraph (b), above, to execute SF 189 as a condition prior to receiving access to classified information.

(d) Only the National Security Council may grant an agency's application for a waiver from the use of SF 189. To apply for a waiver, an agency must submit its proposed alternative nondisclosure agreement to the Director of ISOO, along with its justification. The Director of ISOO will request a determination about the alternative agreement's enforceability from the Department of Justice prior to making a recommendation to the National Security Council.

(e) Each agency must retain its executed copies of the SF 189 in file systems from which the agreements can be expeditiously retrieved in the event that the United States must seek their enforcement.

(f) The national stock number for the SF 189 is 7540-01-161-1869.

Dated: September 8, 1983.

Steven Garfinkel,

Director, Information Security Oversight
Office.

[FR Doc. 83-24666 Filed 9-8-83; 9:45 am]

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